The opinion in support of the decision being entered today is not binding precedent of the Board

Filed by: Trial Section Merits Panel

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

OSIRIS THERAPEUTICS, INC

Junior Party, (Patent 6,030,836),

FAXED

APR 2 2 2004

PAT. & T.M. OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

v.

CASE WESTERN RESERVE UNIVERSITY

Senior Party, (Application 09/321,655).

Patent Interference No. 105,197

Before LANE, MEDLEY, and TIERNEY <u>Administrative Patent Judges</u>.

MEDLEY, <u>Administrative Patent Judge</u>.

JUDGMENT -- NO INTERFERENCE-IN-FACT

Upon consideration of the record, it is

ORDERED that in view of the three-judge merits panel decision (Paper 22) that there is no interference-in-fact, final judgment is entered that there is no interference-in-fact between (1) Osiris Therapeutics, Inc. claims 1-3, 8, 12 and 13, and (2) Case Western Reserve University claims 2-5;

FURTHER ORDERED that the subject matter of Osiris Therapeutics, Inc. claims 1-3, 8, 12 and 13 is no impediment under the law to the issuance of a patent to Case Western Reserve University;

FURTHER ORDERED that the subject matter of Case Western Reserve University claims 2-5 is no basis for cancellation of any of Osiris Therapeutics, Inc. claims 1-3, 8, 12 and 13;

FURTHER ORDERED that a copy of this paper shall be made of record in files of application 09/321,655 and U.S. Patent 6,030,836; and

FURTHER ORDERED that the files of application 09/321,655 and U.S. Patent 6,030,836 be returned to the examiner for further action consistent with this opinion1.

> SALLY GARDNER LANE Administrative Patent Judge

Administrative Patent Judge

BOARD OF PATENT

APPEALS AND

INTERFERENCES

MICHAEL P. TIERNEY

Administrative Patent Judge

¹ The examiner shall enter into the Osiris Therauptic Inc. 6,030,836 patent file record Osiris' disclaimer of claim 18 (Paper 19). See 37 CFR § 1.321(a).

cc (via facsimile):

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